

103^D CONGRESS
2^D SESSION

S. 2018

To reauthorize Public Law 81–815 (School Construction), and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14 (legislative day, APRIL 11), 1994

Mr. PRESSLER introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To reauthorize Public Law 81–815 (School Construction),
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SCHOOL CONSTRUCTION.**

4 The Act entitled “An Act relating to the construction
5 of school facilities in areas affected by Federal activities,
6 and for other purposes” approved September 23, 1950 (20
7 U.S.C. 631 et seq.) is amended to read as follows:

1 **“SECTION 1. STATEMENT OF PURPOSE AND AUTHORIZA-**
2 **TION OF APPROPRIATIONS.**

3 “(a) STATEMENT OF PURPOSE.—It is the purpose of
4 this Act to provide financial assistance to federally im-
5 pacted school districts which are urgently in need of—

6 “(1) school facilities in school districts—

7 “(A) that have substantial increases in
8 school membership as a result of new or in-
9 creased Federal activities; and

10 “(B) the membership of which includes
11 children in need of minimum school facilities;
12 and

13 “(2) facility improvements or structural modi-
14 fications due to the need to meet life safety codes,
15 average daily attendance requirements, Federal laws,
16 rules or regulations, or curriculum improvements.

17 “(b) AUTHORIZATION OF APPROPRIATIONS.—

18 “(1) IN GENERAL.—There are authorized to be
19 appropriated \$29,000,000 for fiscal year 1995, and
20 such sums as may be necessary for each of the fiscal
21 years 1996 through 1999, to carry out sections 5,
22 9, 10, and 13.

23 “(2) ADMINISTRATIVE EXPENSES.—There are
24 authorized to be appropriated such sums as may be
25 necessary for each of the fiscal years 1995 through

1 1999 for the administrative expenses of the Depart-
2 ment of Education.

3 “(3) AVAILABILITY.—Funds appropriated pur-
4 suant to the authority of paragraph (1) shall remain
5 available until expended.

6 **“SEC. 2. PORTION OF APPROPRIATIONS AVAILABLE FOR**
7 **PAYMENTS.**

8 “(a) IN GENERAL.—For each fiscal year the Sec-
9 retary shall determine the portion of the funds appro-
10 priated pursuant to the authority of section 1 which shall
11 be available for carrying out the provisions of sections 9
12 and 10. The remainder of such funds shall be available
13 for paying to local educational agencies the Federal share
14 of the cost of projects for the construction of school facili-
15 ties for which applications have been approved under sec-
16 tion 6.

17 “(b) ALLOCATION BETWEEN SECTIONS 5 AND 13.—
18 In any fiscal year the remainder of funds described in the
19 second sentence of subsection (a) shall be used so that—

20 “(1) 50 percent of such funds are used for pay-
21 ments under section 5 for such year; and

22 “(2) 50 percent of such funds are used for pay-
23 ments under section 13 for such year.

1 “(c) ALLOCATION WITHIN SECTION 5.—In any fiscal
2 year, the amount of funds available for payments under
3 section 5 for such year shall be used so that—

4 “(1) 50 percent of such funds are available for
5 activities described in section 1(a)(1)(A); and

6 “(2) 50 percent of such funds are available for
7 activities described in section 1(a)(1)(B).

8 **“SEC. 3. ESTABLISHMENT OF PRIORITIES.**

9 “(a) IN GENERAL.—In the event that funds appro-
10 priated pursuant to the authority of section 1 and remain-
11 ing available for payment to local educational agencies
12 under this Act are less than the Federal share of the cost
13 of the projects with respect to which applications have
14 been filed prior to such date (and for which funds under
15 section 1 have not already been obligated), the Secretary
16 shall make payments under section 5—

17 “(1) in the case of activities described in section
18 1(a)(1)(A), on the basis of the highest percentage of
19 children in need of minimum school facilities; and

20 “(2) in the case of activities described in section
21 1(a)(1)(B), on the basis of the highest percentage of
22 federally connected students eligible for payment.

23 “(b) SPECIAL RULE.—Only applications meeting the
24 conditions for approval under this Act (other than section

1 6(b)(2)(C)) shall be considered applications for purposes
2 of subsection (a).

3 “(c) INCREASES.—

4 “(1) IN GENERAL.—The priorities described in
5 this section shall be applied so that applications for
6 payments based upon increases in the number of
7 children residing on, or residing with a parent em-
8 ployed on, property which is part of a low-rent hous-
9 ing project assisted under the United States Hous-
10 ing Act of 1937 shall not be approved for any fiscal
11 year until all other applications for payments under
12 paragraph (1) of section 5(a) for payments relating
13 to military connected children, and under sub-
14 sections (a) and (b) of section 13 for payments re-
15 lating to Indian children, have been approved for
16 that fiscal year.

17 “(2) MILITARY CONNECTED CHILDREN.—For
18 the purpose of paragraph (1), the term ‘military
19 connected children’ means children described in—

20 “(A) section 3(a) of Public Law 81–874
21 who reside on a military installation;

22 “(B) section 3(b)(1) of such Public Law
23 who reside on a military installation;

1 “(C) section 3(b)(2) of such Public Law
2 who have a parent employed on a military in-
3 stallation; and

4 “(D) section 3(b)(3) of such Public Law.

5 **“SEC. 4. FEDERAL SHARE FOR ANY PROJECT.**

6 “(a) IN GENERAL.—Subject to section 5 (which im-
7 poses limitations on the total of the payments which may
8 be made to any local educational agency), the Federal
9 share of the cost of a project under this Act shall be equal
10 to such cost, but in no case to exceed the cost, in the
11 school district of the applicant, of constructing minimum
12 school facilities, and in no case to exceed the cost in such
13 district of constructing minimum school facilities for the
14 estimated number of children who will be in the member-
15 ship of the schools of such agency at the close of the sec-
16 ond year following the increase period and who will other-
17 wise be without such facilities at such time.

18 “(b) DETERMINATION.—For the purposes of sub-
19 section (a), the number of such children who will otherwise
20 be without such facilities at such time shall be determined
21 by reference to those facilities which as of the date the
22 application for such project is approved, are included in
23 a project the application for which has been approved
24 under this Act.

1 **“SEC. 5. LIMITATION ON TOTAL PAYMENTS TO ANY LOCAL**
2 **EDUCATIONAL AGENCY.**

3 “(a) LIMITATION.—

4 “(1) IN GENERAL.—Subject to the limitations
5 in subsection (c), the total of the payments to a local
6 educational agency under this Act may not exceed
7 the sum of the following:

8 “(A) The estimated increase, since the
9 base year, in the number of children determined
10 with respect to such agency who live on Federal
11 property and have a parent who works on Fed-
12 eral property multiplied by 100 percent of the
13 average per pupil cost of constructing minimum
14 school facilities in the State in which the school
15 district of such agency is situated.

16 “(B) The estimated increase, since the
17 base year, in the number of children determined
18 with respect to such agency who have a parent
19 who lives on or works on Federal property mul-
20 tiplied by 50 percent of such cost.

21 “(2) COMPUTATION RULE.—In computing for
22 any local educational agency the number of children
23 in an increase under subparagraph (A) or (B) of
24 paragraph (1), the estimated number of children de-
25 scribed in such subparagraphs who will be in the
26 membership of the schools of such agency at the

1 close of the increase period shall be compared with
2 the estimated number of such children in average
3 daily membership of the schools of such agency dur-
4 ing the base year, except that the base year average
5 daily membership shall be adjusted to exclude the
6 number of children that formed the basis for pre-
7 vious payments on applications approved 30 or more
8 years prior to the close of the increased period for
9 the application for which the determination is made.

10 “(b) ELECTION.—If both subparagraphs (A) and (B)
11 of subsection (a)(1) apply to a child, the local educational
12 agency shall elect which of such subparagraphs shall apply
13 to such child, except that, notwithstanding the election of
14 a local educational agency to have such subparagraph (B)
15 apply to a child instead of such subparagraph (A), the de-
16 termination of the maximum amount for such agency
17 under subsection (a)(1) shall be made without regard to
18 such election.

19 “(c) MINIMUM INCREASE REQUIREMENT.—A local
20 educational agency shall not be eligible to have any
21 amount included in its maximum by reason of subpara-
22 graph (A) or (B) of subsection (a)(1) unless the increase
23 in children referred to in such subparagraphs is—

24 “(1) at least 20; and

1 “(2)(A) equal to at least 6 percent of the num-
2 ber of federally connected children who were in the
3 average daily membership of the schools of such
4 agency during the base year; or

5 “(B) at least 750,
6 whichever is the lesser.

7 “(d) EXCEPTIONAL CIRCUMSTANCES.—Notwith-
8 standing the provisions of subsection (c) of this section,
9 whenever and to the extent that, in the Secretary’s judg-
10 ment, exceptional circumstances exist which make such ac-
11 tion necessary to avoid inequity and avoid defeating the
12 purposes of the Act, the Secretary may waive or reduce
13 the minimum number requirement or any percentage re-
14 quirement described in subsection (c).

15 “(e) COUNT LIMITATION.—

16 “(1) IN GENERAL.—In determining under this
17 section the total of the payments which may be
18 made to a local educational agency on the basis of
19 any application, the total number of children count-
20 ed for purposes of subparagraph (A) or (B) of sub-
21 section (a)(1) may not exceed—

22 “(A) the number of children whose mem-
23 bership at the close of the increase period for
24 the application is compared with average daily
25 membership in the base period for purposes of

1 that paragraph (except that the base year aver-
2 age daily membership shall not include any chil-
3 dren counted for purposes of a payment pursu-
4 ant to an application approved 30 or more
5 years ago), minus

6 “(B) the number of such children whose
7 membership at the close of the increase period
8 was compared with membership in the base
9 year for purposes of such subparagraph under
10 the last previous application, if any, of the
11 agency on the basis of which any payment has
12 been or may be made to that agency.

13 “(2) LAST PREVIOUS APPLICATION.—For the
14 purpose of paragraph (1)(B) the term ‘last previous
15 application’ means the last application for assistance
16 under this Act that was funded within 4 fiscal years
17 preceding the fiscal year for which the determination
18 is made.

19 **“SEC. 6. APPLICATIONS.**

20 “(a) APPLICATION REQUIRED.—No payment may be
21 made to any local educational agency under this Act ex-
22 cept upon application therefore which is submitted
23 through the appropriate State educational agency and is
24 filed with the Secretary in accordance with regulations
25 prescribed by the Secretary.

1 “(b) CONTENTS.—

2 “(1) IN GENERAL.—Each application by a local
3 educational agency shall set forth the project for the
4 construction of school facilities for such agency with
5 respect to which it is filed, and shall contain or be
6 supported by—

7 “(A) a description of the project and the
8 site therefor, preliminary drawings of the school
9 facilities to be constructed thereon, and such
10 other information relating to the project as may
11 reasonably be required by the Secretary;

12 “(B) assurance that such agency has or
13 will have title to the site, or the right to con-
14 struct upon such site school facilities as speci-
15 fied in the application and to maintain such
16 school facilities on such site for a period of not
17 less than 20 years after the completion of the
18 construction;

19 “(C) assurance that such agency has legal
20 authority to undertake the construction of the
21 project and to finance any non-Federal share of
22 the cost thereof as proposed, and assurance
23 that adequate funds to defray any such non-
24 Federal share will be available when needed;

1 “(D) assurance that such agency will cause
2 work on the project to be commenced within a
3 reasonable time and prosecuted to completion
4 with reasonable diligence;

5 “(E) assurance that, except for emergency
6 relief under section 7 of the Act of September
7 30, 1950 (Public Law 81–874), all laborers and
8 mechanics employed by contractors or sub-
9 contractors on all construction and minor re-
10 modeling projects assisted under this Act shall
11 be paid wages at rates not less than those pre-
12 vailing on similar construction and minor re-
13 modeling in the locality as determined by the
14 Secretary of Labor in accordance with the
15 Davis-Bacon Act, as amended (40 U.S.C.
16 276a–276a–5) and the Secretary of Labor shall
17 have, with respect to the labor standards speci-
18 fied in this subparagraph, the authority and
19 functions set forth in Reorganization Plan
20 Numbered 14 or 1950 and section 2 of the Act
21 of June 13, 1934, as amended (40 U.S.C.
22 276c), (20 U.S.C. 1232(b));

23 “(F) assurance that the school facilities of
24 such agency will be available to the children for
25 whose education contributions are provided in

1 this Act on the same terms, in accordance with
2 the laws of the State in which the school dis-
3 trict of such agency is situated, as such facili-
4 ties are available to other children in such
5 school district; and

6 “(G) assurance that such agency will from
7 time to time prior to the completion of the
8 project submit such reports relating to the
9 project as the Secretary may reasonably re-
10 quire.

11 “(2) APPROVAL.—Except as provided in para-
12 graph (3), the Secretary shall approve any applica-
13 tion if the Secretary finds—

14 “(A) that the requirements of paragraph
15 (1) have been met and that approval of the
16 project would not result in payments in excess
17 of those permitted by sections 4 and 5;

18 “(B) after consultation with the State and
19 local educational agencies, that the project is
20 not inconsistent with overall State plans for the
21 construction of school facilities; and

22 “(C) that there are sufficient Federal
23 funds available to pay the Federal share of the
24 cost of such project and of all other projects for
25 which Federal funds have not already been obli-

1 gated and applications for which, under section
2 3, have a higher priority.

3 “(c) NOTICE AND HEARING.—No application under
4 this Act shall be disapproved in whole or in part until the
5 Secretary has afforded the local educational agency rea-
6 sonable notice and opportunity for hearing.

7 “(d) SUBMISSION.—An application for a payment
8 under this Act shall be submitted by June 30 of the fiscal
9 year preceding the fiscal year for which payment is re-
10 quested. An application submitted pursuant to the preced-
11 ing sentence shall remain active for a period of 2 fiscal
12 years following the fiscal year for which payment under
13 this Act is requested. If a local educational agency wishes
14 to make an application for payment under this Act after
15 the expiration of the 2-year period described in the preced-
16 ing sentence such agency shall resubmit an application in
17 accordance with this section.

18 **“SEC. 7. PAYMENTS.**

19 “(a) IN GENERAL.—Upon approving the application
20 of any local educational agency under section 6, the Sec-
21 retary shall pay to such agency an amount equal to 10
22 percent of the Federal share of the cost of the project.
23 After final drawings and specifications have been approved
24 by the Secretary and the construction contract has been
25 entered into, the Secretary, in accordance with regulations

1 prescribed by the Secretary and at such times and in such
2 installments as may be reasonable, shall pay to such agen-
3 cy the remainder of the Federal share of the cost of the
4 project.

5 “(b) REPAYMENT.—Any funds paid to a local edu-
6 cational agency under this Act and not expended for the
7 purposes for which paid shall be repaid to the Treasury
8 of the United States.

9 **“SEC. 8. ADDITIONAL PAYMENTS.**

10 “(a) IN GENERAL.—Not to exceed 10 percent of the
11 funds appropriated pursuant to the authority of section
12 1(b)(1) for any fiscal year may be used by the Secretary,
13 under regulations prescribed by the Secretary, to make
14 grants to local educational agencies where—

15 “(1) the application of such agencies would be
16 approved under this Act but for the agencies’ inabil-
17 ity, unless aided by such grants, to finance the non-
18 Federal share of the cost of the projects set forth in
19 their applications; or

20 “(2) although the applications of such agencies
21 have been approved, the projects covered by such ap-
22 plications could not, without such grants, be com-
23 pleted, because of flood, fire, or similar emergency
24 affecting either the work on the projects or the

1 agencies' ability to finance the non-Federal share of
2 the cost of the projects.

3 “(b) SPECIAL RULE.—The grants described in sub-
4 section (a) shall be in addition to the payments otherwise
5 provided under this Act, shall be made to those local edu-
6 cational agencies whose need for additional aid is the most
7 urgent and acute, and insofar as practicable shall be made
8 in the same manner and upon the same terms and condi-
9 tions as such other payments.

10 “(c) ADDITIONAL APPROPRIATIONS REQUIRED.—
11 The provisions of this section shall take effect only when
12 funds are specifically appropriated to carry out this sec-
13 tion.

14 **“SEC. 9. WHERE EFFECT OF FEDERAL ACTIVITIES WILL BE**
15 **TEMPORARY.**

16 “Notwithstanding the preceding provisions of this
17 Act, whenever the Secretary determines that the member-
18 ship of some or all of the children, who may be included
19 in computing under section 5 the maximum on the total
20 of the payments for any local educational agency, will be
21 of temporary duration only, such membership shall not be
22 included in computing such maximum. Instead, the Sec-
23 retary may make available to such agency such temporary
24 school facilities as may be necessary to take care of such
25 membership; or the Secretary may, where the local edu-

1 cational agency gives assurance that at least minimum
2 school facilities will be provided for such children, pay (on
3 such terms and conditions as the Secretary deems appro-
4 priate to carry out the purposes of this Act) to such agen-
5 cy for use in constructing school facilities an amount equal
6 to the amount which the Secretary estimates would be nec-
7 essary to make available such temporary facilities. In no
8 case may the amount so paid exceed the cost, in the school
9 district of such agency of constructing minimum school
10 facilities for such children. The Secretary may transfer to
11 such agency or its successor all the right, title, and inter-
12 est of the United States in and to any temporary facilities
13 made available to such agency under this section; and such
14 transfer shall be without charge, but may be made on such
15 other terms and conditions, and at such time as the Sec-
16 retary deems appropriate to carry out the purposes of this
17 Act.

18 **“SEC. 10. CHILDREN FOR WHOM LOCAL AGENCIES ARE UN-**
19 **ABLE TO PROVIDE EDUCATION.**

20 “(a) IN GENERAL.—In the case of children who it
21 is estimated by the Secretary in any fiscal year will reside
22 on Federal property at the end of the next fiscal year—
23 “(1) if no tax revenues of the State or any po-
24 litical subdivision thereof may be expended for the
25 free public education of such children; or

1 “(2) if it is the judgment of the Secretary, after
2 the Secretary has consulted with the appropriate
3 State educational agency, that no local educational
4 agency is able to provide suitable free public edu-
5 cation for such children,
6 the Secretary shall make arrangements for constructing,
7 leasing, renovating, remodeling, or rehabilitating or other-
8 wise providing the minimum school facilities necessary for
9 the education of such children. In any case in which the
10 Secretary makes arrangements under this section for con-
11 structing, leasing, renovating, remodeling, or rehabilitat-
12 ing or otherwise providing minimum school facilities situ-
13 ated on Federal property in Puerto Rico, Wake Island,
14 Guam, American Samoa, the Northern Mariana Islands,
15 or the Virgin Islands, the Secretary may also include mini-
16 mum school facilities necessary for the education of chil-
17 dren residing with a parent employed by the United States
18 though not residing on Federal property, but only if the
19 Secretary determines, after consultation with the appro-
20 priate State educational agency, (A) that the construction
21 or provision of such facilities is appropriate to carry out
22 the purposes of this subsection, (B) that no local edu-
23 cational agency is able to provide suitable free public edu-
24 cation for such children, and (C) that English is not the
25 primary language of instruction in schools in the locality.

1 Such arrangements may also be made to provide, on a
2 temporary basis, minimum school facilities for children of
3 members of the Armed Forces on active duty, if the
4 schools in which free public education is usually provided
5 for such children are made unavailable to such children
6 as a result of official action by State or local governmental
7 authority and it is the judgment of the Secretary, after
8 the Secretary has consulted with the appropriate State
9 educational agency, that no local educational agency is
10 able to provide suitable free public education for such chil-
11 dren.

12 “(b) SPECIAL RULES.—

13 “(1) COMPARABILITY.—To the maximum ex-
14 tent practicable school facilities provided under this
15 section shall be comparable to minimum school fa-
16 cilities provided for children in comparable commu-
17 nities in the State.

18 “(2) INAPPLICABILITY.—This section shall not
19 apply to—

20 “(A) children who reside on Federal prop-
21 erty under the control of the Atomic Energy
22 Commission; and

23 “(B) Indian children attending schools
24 supported by the Bureau of Indian Affairs.

1 “(3) SPECIAL RULE.—Whenever it is necessary
2 for the Secretary to provide school facilities for chil-
3 dren residing on Federal property under this section,
4 the membership of such children may not be in-
5 cluded in computing under section 5 the maximum
6 on the total of the payments for any local edu-
7 cational agency.

8 “(c) TRANSFERS.—When the Secretary determines it
9 is in the interest of the Federal Government to do so, the
10 Secretary may transfer, upon the written request of the
11 local educational agency, to the appropriate local edu-
12 cational agency all the right, title, and interest of the
13 United States in and to any facilities provided under this
14 Act (or section 204 or 310 of Public Law 81–815 as such
15 law was in effect January 1, 1958). Prior to any transfer,
16 the facility shall meet all State and Federal building
17 health and safety codes, regulations and laws. Any such
18 transfer shall be without charge, but may be made on such
19 other terms and conditions and at such time as the Sec-
20 retary deems appropriate to carry out the purposes of this
21 Act.

22 “(d) SPECIAL RULE REGARDING TAX REVENUES.—
23 If no tax revenues of a State or of any political subdivision
24 of the State may be expended for the free public education
25 of children who reside on any Federal property within the

1 State, or if no tax revenues of a State are allocated for
2 the free public education of such children, then the prop-
3 erty on which such children reside shall not be considered
4 Federal property for the purposes of section 5 of this Act.

5 **“SEC. 11. WITHHOLDING OF PAYMENTS.**

6 “(a) IN GENERAL.—Whenever the Secretary, after
7 providing reasonable notice and opportunity for hearing
8 to a local educational agency, finds that—

9 “(1) there is a substantial failure to comply
10 with the drawings and specifications for the project;

11 “(2) any funds paid to a local educational agen-
12 cy under this Act have been diverted from the pur-
13 poses for which paid; or

14 “(3) any assurance given in an application is
15 not being or cannot be carried out,

16 the Secretary may notify such agency that no further pay-
17 ment will be made under this Act with respect to such
18 agency until there is no longer any failure to comply or
19 the diversion or default has been corrected or, if compli-
20 ance or correction is impossible, until such agency repays
21 or arranges for the repayment of Federal moneys which
22 have been diverted or improperly expended.

23 “(b) JUDICIAL REVIEW.—The final refusal of the
24 Secretary to approve part or all of any application under
25 this Act, and the Secretary’s final action under subsection

1 (a) of this section, shall be subject to judicial review on
2 the record, in the United States court of appeals for the
3 circuit in which the local educational agency is located,
4 in accordance with the provisions of the Administrative
5 Procedure Act.

6 **“SEC. 12. USE OF OTHER FEDERAL AGENCIES TRANSFER**
7 **AND AVAILABILITY OF APPROPRIATIONS.**

8 “(a) ADMINISTRATION.—In carrying out the provi-
9 sions of this Act, the Secretary is authorized to utilize the
10 services and facilities of any agency of the Federal Govern-
11 ment and of any other public or nonprofit agency or insti-
12 tution, in accordance with appropriate agreements, and to
13 pay for such services either in advance or by way of reim-
14 bursement, as may be agreed upon.

15 “(b) REQUESTS FOR INFORMATION.—All Federal de-
16 partments or agencies administering Federal property on
17 which children reside, and all such departments or agen-
18 cies principally responsible for Federal activities which
19 may give rise to a need for the construction of school fa-
20 cilities, shall to the maximum extent practicable, comply
21 with requests of the Secretary for information the Sec-
22 retary may require in carrying out the purposes of this
23 Act.

24 “(c) SPECIAL RULE.—No appropriation to any de-
25 partment or agency of the United States, other than an

1 appropriation to carry out this Act, shall be available for
2 the same purposes as this Act.

3 **“SEC. 13. SCHOOL CONSTRUCTION ASSISTANCE IN OTHER**
4 **FEDERALLY AFFECTED AREAS.**

5 “(a) ASSISTANCE AUTHORIZED FOR CERTAIN IN-
6 DIAN CHILDREN.—

7 “(1) IN GENERAL.—If the Secretary determines
8 with respect to any local educational agency that—

9 “(A) such agency is providing or, upon
10 completion of the school facilities for which pro-
11 vision is made under this subsection, will pro-
12 vide free public education for children who re-
13 side on Indian lands, and whose membership in
14 the schools of such agency has not formed and
15 will not form the basis for payments under
16 other provisions of this Act, and that the total
17 number of such children represents a substan-
18 tial percentage of the total number of children
19 for whom such agency provides free public edu-
20 cation, or that such Indian lands constitute a
21 substantial part of the school district of such
22 local educational agency, or that the total num-
23 ber of such children who reside on Indian lands
24 located outside the school district of such agen-
25 cy equals or exceeds 100;

1 “(B) the immunity of such Indian lands to
2 taxation by such agency has created a substan-
3 tial and continuing impairment of such agency’s
4 ability to finance needed school facilities;

5 “(C) such agency is making a reasonable
6 tax effort and is exercising due diligence in
7 availing itself of State and other financial as-
8 sistance available for the purpose of this sec-
9 tion; and

10 “(D) such agency does not have sufficient
11 funds available to such agency from other Fed-
12 eral, State, and local sources to provide the
13 minimum school facilities required for free pub-
14 lic education of a substantial percentage of the
15 children in the membership of its schools,

16 then the Secretary may provide the additional assist-
17 ance necessary to enable such agency to provide
18 such facilities upon such terms and in such amounts
19 (subject to the provisions of this section) as the Sec-
20 retary may consider to be in the public interest, ex-
21 cept that such additional assistance may not exceed
22 the portion of the cost of such facilities or improve-
23 ments or structural modifications which the Sec-
24 retary estimates has not been, and is not to be, re-
25 covered by the local educational agency from other

1 sources, including payments by the United States
2 under any provision of this Act or any other law.

3 “(2) WAIVER.—Notwithstanding the provisions
4 of this subsection, the Secretary may waive the per-
5 centage requirement described in paragraph (1)(A)
6 whenever, in the Secretary’s judgment, exceptional
7 circumstances exist which make such actions nec-
8 essary to avoid inequity and avoid defeating the pur-
9 poses of this section. Assistance may be furnished
10 under this subsection without regard to paragraph
11 (1)(B) (but subject to the other provisions of this
12 subsection and subsection (e)) to any local edu-
13 cational agency which provides free public education
14 for children who reside on Indian lands located out-
15 side its school district.

16 “(3) DEFINITION.—For purposes of this sub-
17 section ‘Indian lands’ means Indian reservations or
18 other real property referred to in the second sen-
19 tence of section 14(4).

20 “(b) ASSISTANCE AUTHORIZED FOR OTHER INDIAN
21 CHILDREN.—

22 “(1) IN GENERAL.—If the Secretary determines
23 with respect to any local educational agency that—

24 “(A) such agency is providing or, upon
25 completion of the school facilities for which pro-

1 vision is made under this subsection will provide
2 free public education for children who reside on
3 Indian lands, and whose membership in the
4 schools of such agency has not formed and will
5 not form the basis for payments under other
6 provisions of this Act, and that the total num-
7 ber of such children represents a substantial
8 percentage of the total number of children for
9 whom such agency provides free public edu-
10 cation, or that such local educational agency, or
11 that the total number of such children who re-
12 side on Indian lands located outside the school
13 district of such agency equals or exceeds 100;
14 and

15 “(B) the immunity of such Indian lands to
16 taxation by such agency has created a substan-
17 tial and continuing impairment of such agency’s
18 ability to finance needed school facilities,

19 then the Secretary may, upon such terms and in
20 such amounts (subject to the provisions of this sec-
21 tion) as the Secretary may consider to be in the pub-
22 lic interest, provide the additional assistance nec-
23 essary to enable such agency to provide the mini-
24 mum school facilities required for free public edu-
25 cation of children in the membership of the schools

1 of such agency who reside on Indian lands, except
2 that such additional assistance may not exceed the
3 portion of the cost of constructing such facilities
4 which the Secretary estimates has not been, and is
5 not to be, recovered by the local educational agency
6 from other sources, including payments by the Unit-
7 ed States under any provisions of this Act or any
8 other law.

9 “(2) WAIVER.—Notwithstanding the provisions
10 of this subsection, the Secretary may waive the per-
11 centage requirement in paragraph (1)(A) whenever,
12 in the Secretary’s judgment, exceptional cir-
13 cumstances exist which make such action necessary
14 to avoid inequity and avoid defeating the purpose of
15 this section. Assistance may be furnished under this
16 subsection without regard to paragraph (1)(B) (but
17 subject to the other provisions of this subsection and
18 subsection (e)) to any local educational agency which
19 provides free public education for children who re-
20 side on Indian lands located outside its school dis-
21 trict.

22 “(3) DEFINITION.—For purposes of this sub-
23 section ‘Indian lands’ means Indian reservations or
24 other real property referred to in the second sen-
25 tence of section 14(4).

1 “(c) ASSISTANCE AUTHORIZED FOR INADEQUATELY
2 HOUSED CHILDREN.—

3 “(1) IN GENERAL.—If the Secretary determines
4 with respect to any local educational agency that—

5 “(A) such agency is providing or, upon
6 completion of the school facilities for which pro-
7 vision is made under this subsection, will pro-
8 vide, free public education for children who are
9 inadequately housed by minimum school facili-
10 ties and whose membership in the schools of
11 such agency has not formed and will not form
12 the basis for payments under other provisions
13 of this section, and the total number of such
14 children represents a substantial percentage of
15 the total number of children for whom such
16 agency provides free public education, and Fed-
17 eral property constitutes a substantial part of
18 the school district of such agency;

19 “(B) the immunity of such Federal prop-
20 erty from taxation by such agency has created
21 a substantial and continuing impairment of
22 such agency’s ability to finance needed school
23 facilities;

24 “(C) such agency is making a reasonable
25 tax effort and is exercising due diligence in

1 availing itself of State and other financial as-
2 sistance available for the purpose of this sec-
3 tion; and

4 “(D) such agency does not have sufficient
5 funds available to such agency from other Fed-
6 eral, State, and local sources to provide the
7 minimum school facilities required for free pub-
8 lic education of a substantial percentage of the
9 children in the membership of its schools,

10 then the Secretary may provide the assistance nec-
11 essary to enable such agency to provide minimum
12 school facilities for children in the membership of
13 the schools of such agency whom the Secretary finds
14 to be inadequately housed, upon such terms and con-
15 ditions, and in such amounts (subject to the applica-
16 ble provisions of this section) as the Secretary may
17 consider to be in the public interest. Such assistance
18 may not exceed the portion of the cost of such facili-
19 ties or improvements or structural modifications
20 which the Secretary estimates has not been, and is
21 not to be, recovered by the local educational agency
22 from other sources, including payments by the Unit-
23 ed States under any other provisions of this Act or
24 any other law.

1 “(2) WAIVER.—Notwithstanding the provisions
2 of this subsection, the Secretary may waive the per-
3 centage requirement in paragraph (1)(A) whenever,
4 in the Secretary’s judgment, exceptional cir-
5 cumstances exist which make such action necessary
6 to avoid inequity and avoid defeating the purposes of
7 this section.

8 “(d) APPLICATION.—No payment may be made to
9 any local educational agency under subsection (a) or (b)
10 except upon application therefor which is submitted
11 through the appropriate State educational agency and is
12 filed with the Secretary in accordance with regulations
13 prescribed by the Secretary, and which meets the require-
14 ments of section 6(b)(1). In determining the order in
15 which such applications shall be approved, the Secretary
16 shall consider the relative educational and financial needs
17 of the local educational agencies which have submitted ap-
18 proved applications and the nature and extent of the Fed-
19 eral responsibility. No payment may be made under sub-
20 sections (a) or (b) unless the Secretary finds, after con-
21 sultation with the State and local educational agencies,
22 that the project or projects with respect to which the pay-
23 ment is made are not inconsistent with overall State plans
24 for the construction of school facilities. All determinations
25 made by the Secretary under this section shall be made

1 only after consultation with the appropriate State edu-
 2 cational agency and the local educational agency.

3 “(e) PAYMENTS.—Amounts paid by the Secretary to
 4 local educational agencies under subsections (a) or (b)
 5 may be paid in advance of, or by way of reimbursement
 6 for, work performed or purchases made pursuant to the
 7 agreement with the Secretary under this section, and may
 8 be paid in such installments as the Secretary may deter-
 9 mine. Any funds paid to a local educational agency under
 10 this section and not expended or otherwise used for the
 11 purposes for which paid shall be repaid to the Treasury
 12 of the United States.

13 “(f) INAPPLICABILITY OF CERTAIN PROVISIONS.—
 14 None of the provisions of sections 1 through 10, other
 15 than section 6(2)(A) shall apply with respect to determina-
 16 tions made under this section.

17 **“SEC. 14. DEFINITIONS AND DETERMINATIONS.**

18 “(a) DEFINITIONS.—As used in this section:

19 “(1) BASE YEAR.—The term ‘base year’ means
 20 the third or fourth regular school year preceding the
 21 fiscal year in which an application was filed under
 22 section 6, as may be designated in the application.

23 “(2) CHILD.—The term ‘child’ means any child
 24 who is within the age limits for which the applicable
 25 State provides free public education.

1 “(3) CONSTRUCT; CONSTRUCTING; AND CON-
2 STRUCTION.—The terms ‘construct’, ‘constructing’,
3 and ‘construction’ include the preparation of draw-
4 ings and specifications for school facilities; erecting,
5 building, acquiring, altering, remodeling, improving,
6 modifying, or extending school facilities; and the in-
7 spection and supervision of the construction of
8 school facilities.

9 “(4) FEDERAL PROPERTY.—(A) The term
10 ‘Federal property’ means real property which is
11 owned by the United States or is leased by the Unit-
12 ed States, and which is not subject to taxation by
13 any State or any political subdivision of a State or
14 by the District of Columbia. Except for purposes of
15 sections 5, 10, and 13(c), such term includes—

16 “(i) real property held in trust by the
17 United States for individual Indians or Indian
18 tribes, and real property held by individual In-
19 dians or Indian tribes which is subject to re-
20 strictions on alienation imposed by the United
21 States;

22 “(ii) any low-rent housing (whether or not
23 owned by the United States) which is part of a
24 low-rent housing project assisted under the
25 United States Housing Act of 1937; and

1 “(iii) any interest in Federal property (as
2 defined in the provisions of clauses (i) and (ii))
3 under an easement, lease, license, permit, or
4 other arrangement, as well as any improve-
5 ments of any nature (other than pipelines or
6 utility lines) on such property even though such
7 interests or improvements are subject to tax-
8 ation by a State or political subdivision of a
9 State or by the District of Columbia.

10 “(B) Notwithstanding the provisions of sub-
11 paragraph (A), such term does not include—

12 “(i) any real property used for a labor sup-
13 ply center, labor home, or labor camp for mi-
14 gratory farm workers; and

15 “(ii) any real property under the jurisdic-
16 tion of the United States Postal Service and
17 used primarily for the provision of postal serv-
18 ices.

19 “(5) FREE PUBLIC EDUCATION.—The term
20 ‘free public education’ means education which is pro-
21 vided at public expense, under public supervision
22 and direction, and without tuition charge, and which
23 is provided as elementary or secondary school edu-
24 cation in the applicable State.

1 “(6) INCREASED PERIOD.—The term ‘increased
2 period’ means the period of 4 consecutive regular
3 school years immediately following such base year.

4 “(7) LOCAL EDUCATIONAL AGENCY.—The term
5 ‘local educational agency’ means a board of edu-
6 cation of any public school or other legally con-
7 stituted local public school authority having adminis-
8 trative control and direction of free public education
9 in a county, township, independent, or other school
10 district located within a State. Such term includes
11 any State agency which directly operates and main-
12 tains facilities for providing free public education or
13 which has responsibility for the provision of such fa-
14 cilities.

15 “(8) PARENT.—The term ‘parent’ includes a
16 legal guardian or other person standing in loco
17 parentis.

18 “(9) SCHOOL FACILITIES.—The term ‘school fa-
19 cilities’ includes classroom and related facilities; and
20 initial equipment, machinery, and utilities necessary
21 or appropriate for school purposes. Such term does
22 not include athletic stadiums, or structures or facili-
23 ties intended primarily for athletic exhibitions, con-
24 tests, or games or other events for which admission
25 is to be charged to the general public. Except as

1 used in sections 9 and 10 such term does not include
2 interests in land and offsite improvements.

3 “(10) SECRETARY.—The term ‘Secretary’, un-
4 less otherwise specified, means the Secretary of Edu-
5 cation.

6 “(11) STATE.—The term ‘State’ means a State,
7 the Commonwealth of Puerto Rico, Guam, the Dis-
8 trict of Columbia, American Samoa, the Common-
9 wealth of the Northern Mariana Islands, the Virgin
10 Islands, or Wake Island.

11 “(12) STATE EDUCATIONAL AGENCY.—The
12 term ‘State educational agency’ means the officer or
13 agency primarily responsible for the State super-
14 vision of public elementary and secondary schools.

15 “(b) DETERMINATIONS.—

16 “(1) MEMBERSHIP OF SCHOOLS.—(A) The
17 membership of schools shall be determined in ac-
18 cordance with State law or, in the absence of State
19 law governing such a determination, in accordance
20 with regulations of the Secretary, except that, not-
21 withstanding any other provisions of this section,
22 where the local educational agency of the school dis-
23 trict in which any child resides makes or contracts
24 to make a tuition payment for the free public edu-
25 cation of such child in a school situated in another

1 school district, for purposes of this section the mem-
2 bership of such child, shall be held and considered—

3 “(i) if the 2 local educational agencies con-
4 cerned so agree, and if such agreement is ap-
5 proved by the Secretary, as membership of a
6 school of the local educational agency receiving
7 such tuition payment; and

8 “(ii) in the absence of any such approved
9 agreement, as membership of a school of the
10 local educational agency so making or contract-
11 ing to make such tuition payment.

12 “(B) In any determination of membership of
13 schools, children who are not provided free public
14 education (as defined in subsection (a)(5)) shall not
15 be counted.

16 “(2) AVERAGE PER PUPIL COST.—The average
17 per pupil cost of constructing minimum school facili-
18 ties in the State in which the school district of a
19 local educational agency is situated shall be deter-
20 mined by the Secretary on the basis of the average
21 State per pupil construction cost in the year pre-
22 vious to the year of funding (including costs of mini-
23 mum site improvements, minimum initial equipment,
24 and applicable architectural, engineering, and legal
25 fees). The cost of constructing minimum school fa-

1 cilities in the school district of a local educational
 2 agency shall be determined by the Secretary, after
 3 consultation with the State and local educational
 4 agencies, on the basis of such information as may be
 5 contained in the application of such local educational
 6 agency and such other information as the Secretary
 7 may obtain.

8 “(3) TIMING AND INFORMATION REQUIRE-
 9 MENT.—Estimates of membership, and all other de-
 10 terminations with respect to eligibility and maximum
 11 amount of payment, shall be made as of the time of
 12 the approval of the applications for which made, and
 13 shall be made on the basis of the best information
 14 available at the time of such approval.

15 “(4) MINIMUM SCHOOL FACILITIES.—Whether
 16 or not school facilities are minimum school facilities
 17 shall be determined by the Secretary, after consulta-
 18 tion with the State and local educational agencies, in
 19 accordance with regulations prescribed by the Sec-
 20 retary. Such regulations shall—

21 “(A) require the local educational agency
 22 concerned to give due consideration to excel-
 23 lence of architecture and design;

24 “(B) provide that no facility shall be dis-
 25 qualified as a minimum school facility because

1 of the inclusion of works of art in the plans
2 therefor if the cost of such works of art does
3 not exceed 1 percent of the cost of the project;
4 and

5 “(C) require compliance with such stand-
6 ards as the Secretary may prescribe or approve
7 in order to ensure that facilities constructed
8 with the use of Federal funds under this Act
9 shall be, to the extent appropriate in view of the
10 uses to be made of the facilities, accessible to
11 and usable by individuals with disabilities.”.

○

S 2018 IS——2

S 2018 IS——3